



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 860-01
18 April 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 April 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 14 November 1997, a medical board gave you a diagnosis of major depressive disorder, moderate, recurrent, and recommended that your case be referred to the Physical Evaluation Board (PEB). The report was updated and resubmitted on 29 July 1998. An addendum to the medical board report, dated 16 March 1998, added a diagnosis of obstructive sleep apnea, with severe daytime sleepiness and severe oxygen desaturation. The addendum indicates that you had had a positive response to a continuous positive airway pressure (CPAP) device, and that you were doing well and feeling alert during the day. On 20 October 1998, the PEB made preliminary findings that you were unfit for duty because of the depressive disorder, which it rated at 10%, and that your arthritis, elevated liver function test results, chronic severe sleep apnea, and hypertension were not separately unfitting, and did not contribute to the unfitting condition. You accepted those findings on 16 November 1998, and were discharged with entitlement to disability severance pay on 10 December 1998. On 8 October 1999, the Department of Veterans Affairs awarded your ratings of 30% for major depressive disorder; 0% for tinnitus; 10% for hypertension; 10% for mechanical low back strain; and 0% for tendinitis of both hands. On 10 March 2000, the VA added a rating of

50% for sleep apnea, effective from 11 December 1998, and increased the rating for tinnitus to 10%, for a combined rating of 70%.

The Board noted that the VA rated your depression at 30% base, in part, on the results of an examination conducted after you were discharged from the Navy. The Board was not persuaded that your depressive disorder warranted a rating in excess of 10% at the time PEB evaluated your case. The fact that the Department of Veterans Affairs awarded you substantial disability ratings for sleep apnea, mechanical low back strain, essential hypertension, tinnitus and tendinitis was not considered probative of the existence of error or injustice in your case because the VA awards ratings without regard to the issue of fitness for military service. As you have not demonstrated that any of those conditions rendered you unfit for duty, there is no basis for rating any of them. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director